No. 17-5639

IN THE

Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

JOINT APPENDIX – VOLUME I

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February 26, 2018

PETITION FOR WRIT OF CERTIORARI FILED: AUG. 14, 2017
CERTIORARI GRANTED: JAN. 12, 2018

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U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO, ALBUQUERQUE

Criminal Docket for Case #: 1:12-CR-00701-WJ-1

USA

v.

CHAVEZ-MEZA ET AL.

RELEVANT DOCKET ENTRIES

DATE	#	DOCKET TEXT
03/02/2012		Arrest of Adaucto Chavez-Meza (emr) [1:12-mj-00460-LFG] (Entered: 03/02/2012)
03/02/2012	3	NOTICE OF HEARING as to Adaucto Chavez-Meza Initial Appearance set for 3/2/2012 at 09:30 AM in Albuquerque - 340 Pecos Courtroom before Magistrate Judge Lorenzo F. Garcia. (emr)[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] [1:12-mj-00460-LFG] (Entered: 03/02/2012)
		* * *
03/02/2012	6	Clerk's Minutes before Magistrate Judge Lorenzo F. Garcia: Initial Appearance as to Adaucto Chavez-Meza held; Preliminary/Detention Hearing set for 3/5/2012 at 09:30 AM

DATE	#	DOCKET TEXT
		in Albuquerque - 340 Pecos Courtroom; deft held in custody of USMS (Tape #:FTR-Pecos @ 10:11 am) (Interpreter: M. Kagan) (kd) [1:12-mj-00460-LFG] (Entered: 03/02/2012)
		* * *
03/02/2012)	10	NOTICE OF ATTORNEY APPEARANCE: Kenneth Gleria appearing for Adaucto Chavez-Meza (Gleria, Kenneth) [1:12-mj-00460-LFG] (Entered: 03/02/2012)
		* * *
03/05/2012	12	ORDER OF DETENTION by Magistrate Judge Lorenzo F. Garcia as to Adaucto Chavez-Meza, re: 8 MOTION to Detain filed by USA (kd) [1:12-mj-00460-LFG] (Entered: 03/05/2012)
03/05/2012	13	WAIVER of Preliminary Hearing by Adaucto Chavez-Meza (emr) [1:12-mj-00460-LFG] (Entered: 03/06/2012)
		* * *
03/28/2012	17	REDACTED INDICTMENT as to Adaucto Chavez-Meza, Jesus Omar Lopez Valle, Hector Manuel Lopez-Valle. (dds) (Entered: 03/30/2012)
		* * *
04/04/2012	21	Clerk's Minutes for proceedings held before Magistrate Judge Alan C. Torgerson: Arraignment as to

DATE	#	DOCKET TEXT
		Adaucto Chavez-Meza (1) held; not guilty plea to all counts of the Indictment; court to notify of trial date; motions due 4/26/12; deft remains in custody of USM (Tape #:FTR-Gila @ 10:07 am)(Interpreter: Michael Kagan) (mlg) (Entered: 04/04/2012)
		* * *
10/04/2012	36	NOTICE of Attorney Substitution: Marcos Alvaro Gonzalez substituted for Kenneth Gleria (Gonzalez, Marcos) (Entered: 10/04/2012)
		* * *
02/07/2013	46	NOTICE OF ATTORNEY APPEARANCE Nicholas Jon Ganjei appearing for USA. (Ganjei, Nicholas) (Entered: 02/07/2013)
		* * *
02/25/2013	72	Clerk's Minutes for proceedings held before Magistrate Judge Robert Hayes Scott: Plea Hearing held on 2/25/2013, Guilty Plea entered by Adaucto Chavez-Meza (1) Guilty Count 1,2; Defendant remanded to custody of USMS (Tape #:HONDO @ 10:42 AM) (cl) (Entered: 02/25/2013)
		* * *

DATE	#	DOCKET TEXT
02/25/2013	86	CONSENT TO PLEA BEFORE US MAGISTRATE JUDGE by Adaucto Chavez-Meza (dds) (Entered: 02/27/2013)
		* * *
07/03/2013	121	SENTENCING MEMORANDUM by Adaucto Chavez-Meza (Gonzalez, Marcos) (Entered: 07/03/2013)
07/05/2013	122	RESPONSE by USA as to Adaucto Chavez-Meza re 121 Sentencing Memorandum (Hurtado, Samuel) (Entered: 07/05/2013)
07/08/2013	123	Clerk's Minutes for proceedings held before District Judge William P. Johnson: Sentencing held on 7/8/2013 for Adaucto Chavez-Meza (1), Count(s) 1, 2, SENTENCE IMPOSED: CBOP 135 months as to each count, to run concurrently; 5 years supervised release w/special conditions; SPA $200.00; deft in custody. (Court Reporter: T. Garrett)(Interpreter: Humberto Orive) (dmw) (Entered: 07/08/2013)
07/11/2013	124	JUDGMENT as to Adaucto Chavez-Meza by District Judge William P. Johnson. (rwg) (Entered: 07/11/2013)
07/22/2013	127	NOTICE OF APPEAL by Adaucto Chavez-Meza (Filing Fee - Deliver Payment) (Gonzalez, Marcos) (Entered: 07/22/2013)

DATE	#	DOCKET TEXT
		* * *
10/28/2013	153	ORDER OF USCA - granting motion to withdraw and appointing Todd Coberly as appellate counsel as to Adaucto Chavez-Meza re 127 Notice of Appeal - Final Judgment (kg) (Entered: 10/29/2013)
		* * *
01/21/2014	166	MANDATE of USCA - appellant's motion to dismiss is granted as to Adaucto Chavez-Meza re 127 Notice of Appeal – Final Judgment (Attachments: # 1 Order)(kg) (Entered: 01/21/2014)
03/16/2015	167	MOTION to Reduce Sentence - USSC Amendment by Adaucto Chavez-Meza. (kg) (Entered: 03/17/2015)
		* * *
08/10/2015	169	MOTION to Reduce Sentence - USSC Amendment Stipulated Agreement in Petition for Reduced Sentence by Adaucto Chavez-Meza. (Coberly, Todd) (Entered: 08/10/2015)
04/05/2016	172	ORDER by District Judge William P. Johnson granting 167 Motion to Reduce Sentence - USSC Amendment for Adaucto Chavez-Meza (1)(dmw) (Entered: 04/05/2016)

DATE	#	DOCKET TEXT
04/15/2016	174	NOTICE OF APPEAL by Adaucto Chavez-Meza re 172 Order on Motion to Reduce Sentence - USSC Amendment, (Filing Fee - Waived) (Coberly, Todd) (Entered: 04/15/2016)
		* * *
05/08/2017	188	MANDATE of USCA - the judgment is AFFIRMED as to Adaucto Chavez-Meza re 174 Notice of Appeal - Final Judgment (Attachments: # 1 Opinion, # 2 Judgment) (kg) (Entered: 05/09/2017)
		* * *
01/16/2018	192	PETITION FOR WRIT OF CERTIORARI issued in the Supreme Court of the United States as to Adaucto Chavez-Meza re 174 Notice of Appeal - Final Judgment (kg) (Entered: 01/18/2018)

U.S. COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKET #: 16-2062

UNITED STATES

v.

CHAVEZ-MEZA

RELEVANT DOCKET ENTRIES

DATE	#	DOCKET TEXT
04/18/2016		[10360128] Criminal case docketed. Preliminary record filed. DATE RECEIVED: 04/18/2016. Docketing statement, A/Pet designation of record, transcript order form, appointment motion and notice of appearance due 05/02/2016 for Adaucto Chavez-Meza. Notice of appearance due on 05/02/2016 for United States of America. [16-2062] [Entered: 04/18/2016 11:42 AM]
		* * *
04/19/2016		[10360734] Notice of appearance filed by Mr. James Robert Wolfgang Braun for United States of America. CERT. OF INTERESTED PARTIES: y. Served on 04/19/2016. Manner of Service: email. [16-2062] [Entered: 04/19/2016 04:58 PM]

DATE	#	DOCKET TEXT
04/28/2016		[10363653] Notice of appearance submitted by Todd A. Coberly for Appellant Adaucto Chavez-Meza for court review. Certificate of Interested Parties: No. Served on 04/28/2016. Manner of Service: email. [16-2062]–[Edited 04/28/2016 by LG to remove PDF from entry, as pleading was filed on 4/28/2016] TAC [Entered: 04/28/2016 03:15 PM]
		* * *
04/29/2016		[10364106] Order filed by Chief Judge Tymkovich granting Appellant's motion to continue appointment of Todd A. Coberly as counsel of record for appellant. Appointment is effective nunc pro tunc to the date the notice of appeal was filed. Served on 04/29/2016. [16-2062] [Entered: 04/29/2016 02:48 PM]
05/09/2016		[10366663] Record on appeal filed. No. of Volumes: 4, Comments: Vol. I (pleadings); Vol. II (Sealed pleading); Vol. III (Sealed pleadings); Vol. IV (Transcript). Appellant's brief due on 06/20/2016 for Adaucto Chavez-Meza. [16-2062] [Entered: 05/09/2016 01:29 PM]

DATE	#	DOCKET TEXT
06/16/2016		[10378981] Appellant/Petitioner's brief filed by Adaucto Chavez-Meza. 7 paper copies to be provided to the court. Served on 06/16/2016 by email. Oral argument requested? No. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] TAC [Entered: 06/16/2016 10:44 AM]
		* * *
08/22/2016		[10398672] Appellee/Respondent's brief filed by United States of America. 8 paper copies to be provided to the court. Served on: 08/22/2016. Manner of service: email. Oral argument requested? No. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] JRB [Entered: 08/22/2016 02:03 PM]
		* * *
09/09/2016		[10403668] Appellant/Petitioner's reply brief filed by Adaucto Chavez-Meza. 7 paper copies to be provided to the court. Served on 09/09/2016. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] TAC [Entered: 09/09/2016 12:15 PM]
		* * *

DATE	#	DOCKET TEXT
10/14/2016		[10413804] Sealed motion filed by United States of America to supplement the record on appeal. Served on: 10/14/2016 Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] JRB [Entered: 10/14/2016 01:41 PM]
10/14/2016		[10413880] Order filed by Clerk of the Court granting appellee's amended motion to supplement the record on appeal, denying as moot, and in light of this court granting the amended motion to supplement the record on appeal filed by Appellee United States of America. The clerk shall create and file a sealed supplemental volume consisting of the pleading attached to the amended motion to supplement the record on appeal. Served on 10/14/2016. [16-2062] [Entered: 10/14/2016 04:09 PM]
10/14/2016		[10413883] Supplemental record on appeal filed. No. of Volumes: 1, Comments: Volume 1- SEALED district court order. [16-2062] [Entered: 10/14/2016 04:11 PM]

* * *

DATE	#	DOCKET TEXT
11/16/2016		[10422111] Notice of appearance submitted by A. Nathaniel Chakeres for Appellant Adaucto Chavez-Meza for court review. Certificate of Interested Parties: No. Served on 11/16/2016. Manner of Service: email. –[Edited 11/16/2016 by DD. Removed PDF as pleading filed 11/16/16][16-2062] AC [Entered: 11/16/2016 08:29 AM]
		* * *
11/16/2016		[10422479] Order filed by Gorsuch and Matheson – "This matter is before the court on Appellant's Motion to Allow Associate Attorney to Present Oral Argument and for Travel Authorization. Upon careful consideration, the motion is granted." (see order for specifics) Served on 11/16/2016. [16-2062] [Entered: 11/16/2016 04:09 PM]
		* * *
11/17/2016		[10422583] Order filed by Clerk of the Court submitting the case on the briefs. All counsel scheduled to appear are excused from attendance at oral argument on January 17, 2017 in Denver, Colorado. Served on 11/17/2016. [16-2062] [Entered: 11/17/2016 08:40 AM]

DATE	#	DOCKET TEXT
01/17/2017		[10436701] Case submitted on the briefs to Judges Tymkovich, Seymour and Kelly. [16-2062] [Entered: 01/17/2017 11:44 AM]
04/14/2017		[10459474] Affirmed. Terminated on the merits after submissions without oral hearing. Written, signed, published; Judges Tymkovich (authoring judge), Seymour and Kelly. Mandate to issue. [16-2062] [Entered: 04/14/2017 08:17 AM]
04/14/2017		[10459476] Judgment for opinion filed. [16-2062] [Entered: 04/14/2017 08:26 AM]
05/08/2017		[10465060] Mandate issued. [16-2062] [Entered: 05/08/2017 07:04 AM]
07/13/2017		[10482484] Notice from the Supreme Court of the United States that the application for an extension of time to file a petition for a writ of certiorari has been presented to Justice Sotomayor, who on July 10, 2017, extended the time to and including August 14, 2017. Served on 07/10/2017. Manner of Service: US mail. [16-2062] [Entered: 07/13/2017 01:38 PM]
08/18/2017		[10491475] Petition for writ of certiorari filed by Adaucto Chavez-Meza on 08/14/2017. Supreme Court

DATE	#	DOCKET TEXT
		Number 17-5639. [16-2062] [Entered: 08/18/2017 01:17 PM]
01/16/2018		[10528590] Supreme court order dated 01/12/2018 granting certiorari filed. [16-2062] [Entered: 01/16/2018 02:21 PM]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
United States District Court
Albuquerque, New Mexico

MAR 28, 2012

MATTHEW J. DYKMAN
CLERK

Criminal No. 12-701WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUCTO CHAVEZ-MEZA, JESUS OMAR LOPEZ-VALLE, and HECTOR MANUEL LOPEZ-VALLE,

Defendants.

Count 1: 21 U.S.C. § 846: Conspiracy;

Count 2: 21 U.S.C. §§ 841(a)(1) and (b)(1)(A): Possession With Intent to Distribute 500 Grams and More of a Mixture and Substance Containing a Detectable Amount of Methamphetamine; 18 U.S.C. § 2: Aiding and Abetting;

Count 3: 18 U.S.C. §§ 922(g)(5) and 924(a)(2): Prohibited Person in Possession of Firearms.

INDICTMENT

The Grand Jury charges:

Count 1

On or about March 1, 2012, in Bernalillo County, in the District of New Mexico, the defendants, **ADAUCTO CHAVEZ-MEZA, JESUS OMAR LOPEZ-VALLE, and HECTOR MANUEL LOPEZ-VALLE,** did unlawfully, knowingly and intentionally combine, conspire, confederate and agree together and with each other, and with other persons whose names are known and unknown to the Grand Jury, to commit the following offense against the United States, to wit: possession with intent to distribute 500 grams and more of a mixture and substance containing a detectable amount of methamphetamine, contrary to 21 U.S.C. §§ 841(a)(1) and (b)(1)(A).

In violation of 21 U.S.C. § 846.

Count 2

On or about March 1, 2012, in Bernalillo County, in the District of New Mexico, the defendants, **ADAUCTO CHAVEZ-MEZA, JESUS OMAR LOPEZ-VALLE, and HECTOR MANUEL LOPEZ-VALLE,** unlawfully, knowingly and intentionally possessed with intent to distribute 500 grams and more of a mixture and substance containing a detectable amount of methamphetamine.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), and 18 U.S.C. § 2.

Count 3

On or about March 1, 2012, in Bernalillo County, in the District of New Mexico, the defendant, **JESUS OMAR LOPEZ-VALLE,** an alien illegally and

unlawfully in the United States, knowingly possessed, in and affecting commerce, firearms: to wit, a Glock, model 23, .40 caliber pistol, serial number MEF032; a Marlin, model 110M, .22 caliber rifle, serial number 72430491; and a Norinco, model NHM-91, 7.62x39 mm, serial number 9200402.

In violation of 18 U.S.C. §§ 922(g)(5) and 924(a)(2).

A TRUE BILL

/s/

FOREPERSON OF THE GRAND JURY

/s/ [Illegible]
Assistant United States Attorney

/s/ [Illegible]

[1] UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

[Filed 12/02/13]

Criminal Case No. 12-701

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADAUCTO CHAVEZ-MEZA,

Defendant.

Bonito Courtroom
Albuquerque, New Mexico
July 8, 2013
9:45 a.m.

Before the Honorable William P. Johnson
United States District Judge

TRANSCRIPT OF SENTENCING

APPEARANCES:

For the Plaintiff:	Samuel A. Hurtado, Esq. P. O. Box 607 Albuquerque, NM 87103
For the Defendant:	Marcos A. Gonzalez, Esq. 1905 Lomas Blvd., NW Albuquerque, NM 87102

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Official Court Reporter: Thomas L. Garrett
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Albuquerque, NM 87102
(505) 348-2334

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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[3] (In session at 9:45 a.m.)

THE COURT: All right. The next case is United States versus Adaucto Chavez-Meza, 12CR701.

MR. S..MUEL HURTADO: Samuel Hurtado for the United States.

MR. MARCOS GONZALEZ: Good morning, Your Honor. Marcos Gonzalez on behalf of Mr. Chavez-Meza.

THE COURT: Was the Presentence Report reviewed with Mr. Chavez-Meza?

MR. GONZALEZ: It was, Your Honor, in English. He does speak English. Before we begin, Your Honor, Mr. Chavez-Meza has approached me this morning and would ask for a continuance on this matter, Your Honor, on some other –

THE COURT: On what grounds?

MR. GONZALEZ: Sentencing issues that he would like to explore in this matter, and given the sentence that he – the high sentence that he's looking at, I would like to address this with him, Your Honor.

THE COURT: When was this Presentence Report disclosed?

MR. GONZALEZ: It's been a couple of months, Your Honor, looks like back in May, Your Honor.

THE PROBATION OFFICER: Your Honor, it was on May 2nd.

THE COURT: May the 2nd?

[4] THE PROBATION OFFICER: Yes, sir.

THE COURT: It seems to me like there's been time to explore sentencing issues if this matter was disclosed on May the 2nd. I mean, I think under the rules, what's it, 75 days?

What's the government's position?

MR. HURTADO: Your Honor, as I indicated to Mr. Gonzalez, the United States would oppose. The reason for that is the United States has, on two previous occasions out of professional courtesy, already extended him an opportunity to continue this matter in order to file a Sentencing Memorandum. Defendant has already filed a Sentencing Memorandum. The United States has filed its response, and it's the United States' position that this sentencing hearing should go forward.

I'd also like to note the government is ready and also its FBI agent is present for this sentencing hearing, Your Honor. It's the government's position, therefore, that this matter should proceed as scheduled.

THE COURT: Anything else, Mr. Gonzalez, you want to state on this?

MR. GONZALEZ: No, Your Honor. We do understand that this was continued previously. This was brought to my attention this morning, Your Honor. I thought I would bring it before the Court and –

THE COURT: I understand. The defendant's looking at [5] a lengthy sentence because he was involved in distributing methamphetamine. I see no – I've got a busy docket. This matter's been continued before. You know, in terms of the guidelines, they are what they are. There's a request, I think, that defense counsel filed in terms of the Sentencing Memorandum for a below-guideline sentence, and I'll let you make argument on that.

MR. GONZALEZ: Thank you, Your Honor.

THE COURT: But I think the matter, we need to proceed with this, and so the request that this be continued again will be denied.

MR. GONZALEZ: Thank you, Your Honor.

THE COURT: Before I hear from defense counsel, Mr. Hurtado, the government's position on sentencing in this case?

MR. HURTADO: Yes, Your Honor. The United States won't rehash in its entirety the response that the government filed to the defendant's Sentencing Memorandum, but very briefly, the United States would oppose the defendant's request to a variance. It's the government's position that there is no reason for a variance in this case and that the appropriate sentence is 135 months as set forth in the government's Sentencing Memorandum.

One of the primary issues that the United States objects to is the manner in which the defendant describes the [6] offense for which he has been convicted. Throughout the Sentencing Memorandum that the United States has read, it refers to his serious drug offense as, quote, a transgression, a case of aberrant behavior. In the letter to the Court that was drafted by the family, they referred to his transgression as a mistake, and Your Honor, the United States would take issue with that, because this isn't somebody who was stealing a loaf of bread to feed his family. This is somebody who was selling four pounds of methamphetamine to an undercover police officer, and according to the other coconspirators in this case, the defendant had been doing this repeatedly on various occasions.

And given the nature and circumstances of this case, it is the government's position that a sentence within the guideline range is appropriate, and the United States would also like to note that 135 months is actually at the low end, and the government believes that's appropriate.

Thank you.

THE COURT: Mr. Gonzales, I'll hear additional argument from you and then any statement the defendant wishes to make.

MR. GONZALEZ: Certainly, Your Honor. This is a case where it's the amount and purely the amount that suggests a sentence that is at the 135-month range, Your Honor. As you noted earlier, we are here to ask for a sentence below the [7] guidelines, I think well below the guidelines. His history and characteristics of Mr. Chavez himself are unlike many of those others that are involved in this sort of dealings with this

amount of methamphetamines, Your Honor. He does understand what he did, and he did take responsibility. He's never played games with the Court or anything. He's, you know, took responsibility well before trial. It wasn't done on the eve of trial, Your Honor. It was done well before trial.

As far as his history and characteristics of Mr. Chavez himself that would distinguish him is he worked his entire adult life. Even though he was involved in this one incident that we're aware of, he worked. He has skills. He works in construction. He worked for Walmart. He was continually employed – employed, Your Honor, job after job. Doing so, he gained experience and skills that are valuable to him then and will be valuable to him once he returns to society, Your Honor. He's highly employable. He'll be desired by many employers.

As far as his family life, his family is here in the audience today, Your Honor. They've been at every hearing so far. They've been in constant contact with me on pretty much a weekly, biweekly basis, Your Honor, inquiring as to Mr. Chavez's well-being and how the case is proceeding. Once he returns, they are prepared to – to support him and help him get back on his feet, Your Honor. Mr. Chavez is active in the [8] church, has strong community support, Your Honor, and I believe this is aberrant behavior, Your Honor. I don't believe that Mr. Chavez – he – he did make a mistake, Your Honor. He got caught up in this lifestyle that he was living, made some bad decisions, but has taken responsibility for those decisions and would like to move past them.

He understands that he is going to have to serve some time, but we'd like to minimize that as much as possible, Your Honor, so that he can move on from this.

This is his first time that he has been in any sort of trouble, and I don't think he'll have any trouble like this, I can assure you after speaking with him and his family, that he will not be before any court in the future, Your Honor. He had not been before and will not be again after.

In fact, this may be a good time and a good thing that has happened to him at a good time so that he was able to correct his transgressions and move on from that. He's young. He's got lots of skills make him employable, Your Honor, and he's got good support at his family, with his family at home, Your Honor.

Thank you.

THE COURT: Did the defendant want to make a statement?

MR. GONZALEZ: He has a letter prepared, Your Honor. Would Your Honor like to see the letter or would you like him [9] to read it?

THE COURT: I can – whatever your preference is.

THE DEFENDANT: I will read it for you, Your Honor.

THE COURT: Pardon me?

THE DEFENDANT: I'll read it for you.

THE COURT: I'm sorry, do you want to read it or do you want me to read it?

THE DEFENDANT: I'll read it for you.

THE COURT: Okay. Certainly.

THE DEFENDANT: I would like to tell you that I'm sorry for my actions. I want to say sorry to my family. They're present right here, to the United States, to anybody I brought to harm or do anything bad to them.

This choice that I have made in my past, I would also like to apologize to my family for the pain that I have inflicted on them for a choice I have made.

Now that I have been incarcerated 16 months, it has given me time to think about my past and the bad choice I was making, the people I was hanging around, and living life on the edge tough at the time – though at the time, I thought was a good life. In fact, it wasn't. I was only thinking about myself instead of doing what was right and about the people who meant the most to me, which is my family and the loved ones.

I spend my time incarcerated getting closer to God and my family. I also thought about how I would change my life [10] for the future, to make better choices for myself and family. What I am asking a chance to prove to the Court and my family and myself that I can be a better person and live life in a positive way, also to make better choices for my family and myself as a – as I know I've never been in any kind of trouble in the past.

I would like to hope that – that you will take into consideration and sentence me fairly so that I can reunite with my family and move forward with my life in a better and positive way. Thank you for your time and consideration. Please let the Court have mercy on me. Respectfully, Adaucto Chavez.

Thank you.

THE COURT: Mr. Hurtado, the – he was charged on in the counts that are in this Indictment, and then there was a Plea Agreement, and he pled guilty to the two counts. Now, the Presentence Report did reflect other drug-trafficking activity, but he was not assessed – ma'am, you need to sit down.

I didn't see that the pre – that, in terms of the guideline calculations, there was any enhancement for any of this other alleged drug-trafficking activity.

MR. HURTADO: No, sir, that's correct. Some of the information that the United States – the United States obtained was from the coconspirator, Jesús Omar Lopez-Valle, who indicated that he, along with the other coconspirators, the [11] defendant included, had previously transported methamphetamine on various occasions.

THE COURT: Right, but there – in other words, it didn't factor into the guideline calculation.

MR. HURTADO: That's correct. Yes, sir.

THE COURT: All right. I'll adopt the Presentence Report's factual findings and the guideline applications. I've consulted the sentencing factors of 18 U.S.C. 3553(a)(1) through (7). The offense level is 33. The criminal history category is I. Under the sentencing guidelines, that's a guideline range of 135 to 168 months. I'll note on March the 1st, 2012, the des – the defendant distributed 1.7 kilograms of actual methamphetamine to an undercover FBI employee in Albuquerque, New Mexico.

Now, the reason the guideline sentence is high in this case, even the low end of 135 months, is because of the quantity, 1.75 kilograms of actual methamphetamine, and that's a significant quantity and one of the, again, one of the other reasons that the penalty is severe in this case, is because of methamphetamine. It destroys – I mean, I've been doing this a long time, and from what I gather and what I've seen, methamphetamine, it destroys individual lives, it destroys families, it can destroy communities.

Taking into account the history and characteristics of the defendant and mindful that I'm required to impose a [12] sentence that is sufficient but not greater than necessary to satisfy the goals of sentencing, I will find that a sentence that is sufficient but not greater than necessary to satisfy the goals of sentencing is a sentence on the low end of the guideline range of 135 months. That'll be the term as to each of Counts 1 and 2, to run concurrently, for a total term of incarceration of 135 months. If the defendant's eligible while he's in the Bureau of Prisons, I recommend he participate in the 500-hour drug and alcohol treatment program.

As to Counts 1 and 2, the defendant is placed on supervised release for a term of five years as to each count, those terms to run concurrent, for a total term of supervised release of five years. That term is unsupervised with standard conditions and mandatory conditions and the following special condition, and I'm imposing this condition because the Presentence Report reflects that the defendant's not a U.S. citizen but a permanent resident, so he's going to be subject to deportation. And it's been my experience that, with a drug-trafficking offense of this nature, that the United States government will proceed to deport the defendant after service of the sentence. So in terms of the special condition, I'll impose the requirement that the defendant comply with all Immigrations and Customs Enforcement laws.

Also, no fine will be imposed based on the defendant's lack of financial resources. I do have to impose [13] what is called a special penalty assessment of $100, and I'm required to state that it's due immediately.

And finally, I must advise the defendant within 14 days of the entry of the judgment he can appeal the sentence. He also has the right to apply for leave to appeal in forma pauperis if unable to pay for the cost of an appeal.

Did you wish me to make a recommendation to the Bureau of Prisons where the defendant serve his sentence?

MR. GONZALEZ: I believe Florence, Colorado, Your Honor.

THE COURT: I'll recommend that the defendant be designated to serve his sentence at the Florence, Colorado, facility.

All right. Is there anything else on this matter?

MR. GONZALEZ: No, Your Honor.

THE COURT: All right. I'm going to take a short break.

(Recess at 10:00 a.m.)

[14] REPORTER'S CERTIFICATE

I, THOMAS L. GARRETT, Official Court Reporter for the United States District Court, District of New Mexico, hereby certify that I reported the proceedings in 12CR701 and that the pages contained herein are a true and correct transcript of the proceedings.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this 30th day of November 2013.

Thomas L. Garrett, CCR, FCRR
Official Court Reporter
CCR No. 255

AO 245B (Rev 12/10) Criminal Judgment Sheet 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

[Filed 07/11/13]

Case Number: 1:12CR00701-001WJ
USM Number: 65561-051
Defense Attorney: Marcos Gonzalez

UNITED STATES OF AMERICA

v.

ADAUCTO CHAVEZ-MEZA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or
After November 1, 1987)

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2 of Indictment

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ after a plea of not guilty was found guilty on count(s)

The defendant is adjudicated guilty of these offenses:

Title and Section Nature of Offense		*Offense Ended*	*Count Number(s)*
21 U.S.C. Sec. 846	Conspiracy to Violate 21 U.S.C. Sec. 841(b)(1)(A)	03/01/2012	1

21 U.S.C. Sec. 841(b)(1)(A)	Possession With Intent to Distribute 500 Grams and More of a Mixture and Substance Containing a Detectable Amount of Methamphetamine	03/01/2012	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. The Court has considered the United States Sentencing Guidelines and, in arriving at the sentence for this Defendant, has taken account of the Guidelines and their sentencing goals. Specifically, the Court has considered the sentencing range determined by application of the Guidelines and believes that the sentence imposed fully reflects both the Guidelines and each of the factors embodied in 18 U.S.C. § 3553(a). The Court also believes the sentence is reasonable, provides just punishment for the offense and satisfies the need to impose a sentence that is sufficient, but not greater than necessary to satisfy the statutory goals of sentencing.

☐ The defendant has been found not guilty on count .

☐ Count dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant

must notify the court and United States attorney of material changes in economic circumstances.

7/8/2013
Date of Imposition of Judgment

/s/ William P. Johnson
Signature of Judge

Honorable William P. Johnson
United States District Judge
Name and Title of Judge

7/11/2013
Date Signed

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **135 months**.

A term of 135 months is imposed as to each of Counts 1 and 2; said terms shall run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

Florence Federal Correctional Institution, Florence, Colorado, if eligible

The Court recommends the defendant participate in the Bureau of Prisons 500 hour drug and alcohol treatment program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____

to _____ at _____ with a Certified copy of this judgment.

_____

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **5 years unsupervised**.

A term of 5 years is imposed as to each of Counts 1 and 2; said terms shall run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable).
- ☒ The defendant shall cooperate in the collection of DNA as directed by statute. (Check, if applicable).
- ☐ The defendant shall register with the state, local, tribal and/or other appropriate sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Criminal Monetary Penalties sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any

paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall comply with all Immigration and Customs Enforcement laws. This special condition is imposed to ensure the defendant complies with all immigration laws.

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties in accordance with the schedule of payments.

☐ The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:	**Assessment**	**Fine**	**Restitution**
	$200	**$0.00**	**$0.00**

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

A ☒ In full immediately; or

B ☐ $ immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties: Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless

otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

FILED
United States District Court
Albuquerque, New Mexico
MAR 16, 2015
MATTHEW J. DYKMAN
CLERK

Case No. 1:12-cr-00701-001WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUTO CHAVEZ MEZA

Defendant.

DEFENDANT'S MOTION TO AMEND PRESENTENCE INVESTIGATION, RECALCULATE THE FEDERAL SENTENCING GUIDELINES AND TO THEREAFTER RESENTENCE DEFENDANT PURSUANT TO TITLE 18 U.S.C. §3582(c)(2)

COMES NOW Defendant, CHAVEZ MEZA. Pro Se, files this Motion pursuant to Title 18 U.S.C. §3582(c)(2) to amend the presentence investigation report, recalculate the Federal Sentencing Guidelines in the above referenced case and to thereafter resentence Defendant and as ground therefore states as follows.

I. MOTION

1. The Defendant CHAVEZ MEZA was sentneced to a term of 135 months imprisonment predicate on the Federal Sentencing Guidelines. On April 30, 2014 the United States Sentencing Commission enacted Amendment 782 to the United States Sentencing Guidelines (U.S.S.G.).

2. Based on Amendment 782, Defendant moves that his guideline range be reduced and that Defendant be resentenced accordingly.

II. PROCEDURAL HISTORY AND BACKGROUND

3. In march 2012 Defendant was charged by indictment for Violation of 21 U.S.C. 846 Conspiracy to violate 21 U.S.C. 841.

4. On July 8 2013 Defendant was sentenced to 135 months imprisonment.

5. Defendant has been in custody since his arrest in march of 2012 with the Federal Bureau of Prisons and is scheduled for release on December 19 2021

III. BASIS FOR RELIEF REQUESTED

6. On April 30, 2014 the United States Sentencing Commission amended the drug quantity table under §2D1.1(c) which reduced the base offense level for all controlled substances including methamphetamine by two levels. See Amendment 782 to the U.S.S.G.

7. Amendment 782 changed the Drug Quantity Table in U.S.S.G. §2D1.1(C) and the drug precursor table in U.S.S.G. §2D1.11 "Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy." The Amendment is retroactive as of the date of this Defendant's filing of this Motion and is available to all defendants who are

currently in custody. The Defendant falls squarely within the goals set forth in the Amendment's reduction of two levels for all non-violent drug offenses.

8. Defendant, having been sentenced in 2013 was sentenced predicate on the now outdated guideline range and is now entitled for consideration by this Honorable Court to be resentenced predicate on the newly revised two level reduction Guideline Range.

9. Based on this retroactive Amendment 782, it is requested that the United States Probation Office hereby amend the applicable total offense level in Defendant's P.S.I. to reflect the two level reduction set forth in said Amendment 782, Title 18 U.S.C. §3582(c)(2) and that the amended report be forwarded to this Court, to the United States Attorneys Office, the Bureau of Prisons D.S.C.C. Office for Defendant's record and a copy to Defendant for such further action is necessary and appropriate under the law.

IV. CONCLUSION

Wherefore, Defendant CHAVEZ MEZA, for the reasons stated prays that this Honorable Court will grant this Motion to amend the presentence investigation report, recalculate Defendant's Federal Sentencing Guideline Range and to thereafter resentence the Defendant and issue such other and further relief as is just and proper.

Respectfully signed and submitted this 11 day of March, 2015

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 11 day of March, 2015 I placed this Title 18 §3582(c)(2) Motion into the institutional mailbox at C.C.A. Eden Correction for forwarding to the Clerk of Court utilizing the United States Postal Service.

Certified Mail # Institutional Mail

Signed, /s/ Adaucto Chavez

3-11-2015

TO: U.S. Dist. Court Clerk

RE: Aduacto Chavez-Meza
Reg # 65561-051
C.C.A. Detintion
P.O. Box. 605
Eden, T.X. 76837-0605

Case No. 1:12-CR-00701-001WJ

Dear Clerk,

Please find my motion for filing to the Court for the two level Reduction, please allow me a return copy, enclosed is a pray pay stamp envelope. Thank you.

/s/ Adaucto Chavez

Adaucto Chavez Meza
#65561051
CCA Eden Correctional
po box 605
Eden, TX. 76837-0605

[U.S. POSTAGE STAMPS]
RECEIVED
At Albuquerque NM
MAR 16 2015
MATTHEW J. DYKMAN
CLERK

US District Court Clerk
333 Lomas blvd NW
Albuquerque, NM 87102

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed 08/10/15]

Criminal No.: 12-701-1 WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUCTO CHAVEZ-MEZA,

Defendant.

STIPULATED AGREEMENT IN PETITION FOR REDUCED SENTENCE UNDER 18 U.S.C. § 3582(c)(2) REGARDING DRUG QUANTITY TABLE

The Defendant and the United States have reached a stipulated agreement regarding Defendant's **eligibility for a reduced sentence** under 18 U.S.C. § 3582(c)(2) and the Sentencing Guideline policies under section 1B1.10.

As discussed in the United States Probation Memorandum of July 17, 2015, the parties agree that Amendment 782 results in a lower sentencing range for the Defendant. In addition, they agree that the new sentencing range is a term of 108 months to 135 months of imprisonment (i.e., up to the current term of imprisonment that previously was imposed by this Court). The parties agree that the Court has authority under § 3582(c)(2) to impose a new sentence within that range.

The Probation Memorandum stated that the Bureau of Prisons Sentry Disciplinary Report indicates misconduct by Defendant while incarcerated for phone abuse for using another inmate's phone number. The United States, however, agrees that this misconduct is not disqualifying in considering the 18 U.S.C. § 3553(a) sentencing factors.

The Defendant asks the Court to impose an amended sentence of 108 months, which is within the new sentencing range. Defendant notes that the Court sentenced him to the low end of the guidelines range as originally calculated. Defendant further notes that the Court, at sentencing, stated that "the reason the guideline sentence is high in this case, even [at] the low end of 135 months, is because of the quantity, 1.75 kilograms of actual methamphetamine." The Court at sentencing specifically found "that a sentence that is sufficient but not greater than necessary to satisfy the goals of sentencing is a sentence on the low end of the guideline range." While incarcerated, Defendant has received certificates for completing classes in masonry and construction, and is working towards obtaining his GED. Accordingly, Defendant respectfully requests that the Court sentence him at the low end of the newly-calculated guidelines range, i.e. 108 months of imprisonment.

Respectfully submitted,

Todd A. Coberly
Todd A. Coberly
1322 Paseo de Peralta
Santa Fe, NM 87501
(505) 989-1029
todd@coberlymartinez.com

In Agreement,

WILLIAM J. PFLUGRATH
Assistant United States Attorney
Coordinator for § 3582 Responses
(505) 346-7274

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2015, I filed the foregoing pleading using the CM/ECF system, which will electronically send notification of such filing to all counsel of record.

/s/ Todd A. Coberly
Todd A. Coberly

AO 247 (Rev. 11/11) Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)
Page 1 of 2 (Page 2 Not for Public Disclosure)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed 04/05/16]

Case No: 1:12CR00701-001WJ

USM No: 65561-051

Todd A. Coberly
Defendant's Attorney

UNITED STATES OF AMERICA

v.

ADAUCTO CHAVEZ-MEZA

Date of Original Judgment: July 11, 2013

Date of Previous Amended Judgment: _____

(Use Date of Last Amended Judgment if Any)

ORDER REGARDING MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered

such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☐ DENIED. ☒ GRANTED and the defendant's previously imposed sentence of imprisonment *(as reflected in the last judgment issued)* of 135 months **is reduced to** 114 months.

(Complete Parts I and II of Page 2 when motion is granted)

Except as otherwise provided, all provisions of the judgment dated July 11, 2013 shall remain in effect.

IT IS SO ORDERED.

Order Date: 4/5/2016

/s/ [Illegible]
Judge's signature

Effective Date: _____
(if different from order date)

William P. Johnson, United States District Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed 04/15/16]

Case No. 12-cr-00701 WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUCTO CHAVEZ-MEZA,

Defendant.

NOTICE OF APPEAL

Defendant Adaucto Chavez-Meza, by and through undersigned counsel, hereby gives notice that he appeals to the United States Court of Appeals for the Tenth Circuit the Order Regarding Motion for Sentencing Reduction Pursuant to 18 U.S.C. § 3582(c)(2), entered on April 5, 2016.

Respectfully submitted,

COBERLY & MARTINEZ, LLLP

/s/ Todd A. Coberly

Todd A. Coberly
1322 Paseo de Peralta
Santa Fe, NM 87501
(505) 989-1029
todd@coberlymartinez.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016, I filed the foregoing *Notice of Appeal* using the CM/ECF system, which will electronically send notification of such filing to all counsel of record.

/s/ Todd A. Coberly
Todd A. Coberly

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

April 14, 2017

Elisabeth A. Shumaker
Clerk of Court

No. 16-2062

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADAUCTO CHAVEZ-MEZA,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO (D.C. NO. 1:12-CR-00701-WJ-1)

Submitted on the Briefs:

Todd A. Coberly, Coberly & Martinez, LLLP, Santa Fe, New Mexico, for Appellant.

James R.W. Braun, Assistant United States Attorney, and Damon P. Martinez, United States Attorney, Office of the United States Attorney, Albuquerque, New Mexico, for Appellee.

Before **TYMKOVICH**, Chief Judge, **SEYMOUR**, and **KELLY**, Circuit Judges.

TYMKOVICH, Chief Judge.

This case requires us to determine how much explanation a district court must provide when granting a sentence-reduction motion under 18 U.S.C. § 3582(c)(2) and choosing a sentence within the revised Sentencing Guidelines range.

Adaucto Chavez-Meza pleaded guilty to drug conspiracy charges in 2013. He originally received a prison sentence of 135 months, the Sentencing Guidelines minimum. In 2014, the Sentencing Commission amended the Guidelines to reduce the relevant offense levels. Chavez-Meza then sought and was granted a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). He requested the court reduce his sentence to 108 months, the minimum under the revised guidelines range, but the court only reduced his sentence to 114 months. In confirming the new sentence, the district court issued a form order stating it had "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a)." Chavez-Meza appeals his reduced sentence, claiming the district court erred by failing to adequately explain how it applied the § 3553(a) factors in imposing a 114-month sentence.

We **AFFIRM** the district court's sentence-reduction order. Section 3582(c)(2) does not require additional explanation when a district court imposes a guidelines sentence and affirmatively states that it considered the § 3553(a) factors in its decision.

I. Background

Chavez-Meza pleaded guilty to conspiracy and possession with intent to distribute methamphetamine. His guidelines range was 135–168 months. The government recommended a 135-month sentence at the low end of the range, which the sentencing court accepted. The court explained "the reason the guideline sentence is high in this case . . . is because of the quantity, 1.75 kilograms of actual methamphetamine . . . . [O]ne of the other reasons that the penalty is severe in this case[] is because of methamphetamine. It destroys . . . individual lives, it destroys families, it can destroy communities." App., Vol. IV at 15.

In 2015, after the Sentencing Commission amended the Guidelines and reduced the applicable guidelines for this type of crime, Chavez-Meza filed a pro se motion under 18 U.S.C. § 3582(c)(2), asking the district court to modify his sentence.

The district court appointed counsel to represent Chavez-Meza, and the government consented to a "stipulated agreement in petition for reduced sentence." App., Vol. I at 40–41. In the petition they agreed that amendments to the guidelines range resulted in a lower 108- to 135-month sentencing range. Accordingly, Chavez-Meza filed a request for a 108-month sentence, at the low end of the revised range. The government did not offer guidance on a specific sentence.

There is no requirement that district courts hold a hearing in a § 3582(c)(2) sentence-reduction proceeding. *United States v. Piper*, 839 F.3d 1261, 1270 (10th Cir. 2016). Without doing so, then, the district court issued an order on a two-page standard form reducing Chavez-Meza's sentence to 114 months. The form, an "AO-247," is a document prepared by the Federal

Judiciary's Administrative Office. It requires the district court to state it has "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." It also requires the court provide both the previous and amended total offense level, criminal history category, and guidelines range. The court must then check a box indicating where the sentence falls relative to the amended guidelines range. Apart from completing the form, the district court did not otherwise explain its decision to reduce the sentence to 114 months rather than the 108 months Chavez-Meza had requested.

II. Analysis

Chavez-Meza contends the district court erred by failing to adequately state reasons supporting its decision in the sentence-reduction order. He argues mere completion of an AO-247 makes it impossible to determine whether the district court complied with § 3582(c), which requires that courts consider the § 3553(a) sentencing factors. The government argues § 3582(c) does not require that courts state specific reasons for imposing a particular sentence, but only that courts consider the applicable § 3553(a) factors.

We review the scope of a district court's authority in sentence reduction under 18 U.S.C. § 3582(c)(2) de novo. *United States v. Verdin-Garcia*, 824 F.3d 1218, 1221 (10th Cir. 2016). We review a district court's decision to grant or deny a § 3582(c)(2) motion for an abuse of discretion. *Id.* An error of law is per se an abuse of discretion. *Koon v. United States*, 518 U.S. 81, 100 (1996).

Section 3582(c)(2) authorizes a district court to reduce a sentence "based on a sentencing range that

has subsequently been lowered by the Sentencing Commission." The statute provides that "the court *may* reduce the term of imprisonment, after *considering* the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Id.* (emphasis added).

We have explained in previous cases that the plain language of § 3582(c)(2) *does not* incorporate the explanatory requirement from § 3553(c):

> The language of 18 U.S.C. § 3582(c)(2) is clear—it requires the court to *consider* the factors in 18 U.S.C. § 3553(a). It does not mention § 3553(c). This omission is significant because we have previously interpreted the meaning of both subsections, holding that § 3553(a) requires consideration, while § 3553(c) requires an explanation of the sentence. Congress incorporated only one of these distinct requirements into § 3582(c)(2)—the requirement to consider the § 3553(a) factors.

Verdin-Garcia, 824 F.3d at 1221 (citing *United States v. Ruiz-Terrazas*, 477 F.3d 1196, 1201 (10th Cir. 2007)). Thus, the statute in referencing § 3553(a) imposes no particular requirement to provide the level of explanation § 3553(c) requires. Rather, "[s]ection 3553(a) imposes on the district court a duty to '*consider*'" a variety of important sentencing considerations. *Ruiz-Terrazas*, 477 F.3d at 1201. But it nowhere imposes on the court a duty to address those factors on the record; by contrast, § 3553(c) speaks expressly to the nature of the district court's duty to explain itself on the record. It would be incongruous, we think, to read a duty of explanation into subsection (a) when the exact

matter has already been considered and addressed by Congress in subsection (c).

We have also explained that the requirements imposed on a court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding. *Verdin-Garcia*, 824 F.3d at 1221. This distinction reflects the different status of the two proceedings. Original sentencing proceedings invoke important constitutional rights, and § 3553(c) requires sentencing courts to explain and justify a particular sentence, both for procedural and substantive reasonableness. But no statute or case has established this requirement for sentence-reduction proceedings—which makes sense. Sentence-reduction proceedings merely represent "a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments." *Dillon v. United States*, 560 U.S. 817, 828 (2010). Setting the procedural bar for sentence-reduction proceedings higher than for original sentencing proceedings would contravene this hierarchy. We cannot require more for sentence reduction, when § 3553(c) does not apply, than we require for original sentencing, when § 3553(c) does apply. The original sentencing procedures required by § 3553(c) must therefore supply the ceiling for sentence-reduction procedures.

So we begin by reviewing what § 3553(c) requires. We do so not because § 3553(c) applies to sentence reduction, but because the requirements for sentence reduction cannot exceed the requirements of § 3553(c). Congress's decision not to incorporate § 3553(c) into the sentence-reduction provision dictates this approach. Our precedent on § 3553(c) does not tell us what sentence reduction requires, but it tells us the uppermost bound of what it can require.

And that precedent makes clear that original sentencing proceedings do not require extensive explanations for sentences within the guidelines range. "When imposing a sentence within the properly calculated Guidelines range, a district court must provide, as Section 3553(c) indicates by its plain language, only a general statement noting the appropriate guideline range and how it was calculated." *United States v. Ruiz-Terrazas*, 477 F.3d 1196, 1202 (10th Cir. 2007 (internal quotation marks omitted).[1] A court's "citation of the [presentence report's] calculation method and recitation of the suggested imprisonment range amply fulfill[s]" this requirement. *United States v. Algarate-Valencia*, 550 F.3d 1238, 1244 (10th Cir. 2008) (quoting *United States v. Cereceres-Zavala*, 499 F.3d 1211, 1217 (10th Cir. 2007)). "Section 3553(a) imposes on the district court a duty to 'consider' a variety of important sentencing considerations. But it nowhere imposes on the court a duty to address

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[1] More is required at sentencing when the defendant requests a below-guidelines sentence. *See United States v. Sanchez-Juarez*, 446 F.3d 1109, 1117 (10th Cir. 2006) ("[W]here a defendant has raised a nonfrivolous argument that the § 3553(a) factors warrant a below-Guideline sentence and has expressly requested such a sentence, we must be able to discern from the record that the sentencing judge did not rest on the guidelines alone, but considered whether the guidelines sentence actually conforms, in the circumstances, to the statutory factors." (internal quotation marks and alterations omitted)). But that situation is not raised on these facts. Courts can only reduce a sentence to a term less than the guidelines minimum if the sentencing court originally imposed a sentence below the guidelines range. USSG § 1B1.10(b)(2). We do not decide in this case what level of explanation is required when courts decide sentence-reduction motions involving sentences outside the guidelines range.

those factors on the record." *Ruiz-Terrazas*, 477 F.3d at 1201.

Read together, *Verdin-Garcia* and *Ruiz-Terrazas* thus establish that the same "general statement noting the appropriate guideline range and how it was calculated" in applying § 3553(a) also suffices in sentence-reduction proceedings. *Ruiz-Terrazas* confirms that level of explanation satisfies the requirements for sentencing proceedings, and *Verdin-Garcia* clarifies that it provides the ceiling for sentence-reduction proceedings. A contrary rule would go beyond what we have said § 3553(c) requires, thus imposing greater requirements for what both Congress and the Supreme Court have told us is a lesser proceeding—and one to which § 3553(c) does not even apply. We therefore hold that, absent any indication the court failed to consider the § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence.[2]

This makes sense given our review of sentencing decisions. We "traditionally presume, absent some indication in the record suggesting otherwise, that trial judges are presumed to know the law and apply it in making their decisions." *Ruiz-Terrazas*, 477 F.3d at 1201 (alterations and quotation marks omitted). We "do not disturb decisions entrusted by statute or other rule of law to the discretion of a district court unless we have a definite and firm conviction that the lower

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[2] We do not address here whether a district court must justify *rejecting* a sentence-reduction motion. Some courts considering the issue have imposed higher explanatory standards for denying sentence-reduction motions than for granting one but with a longer sentence than the movant sought. *See United States v. Brown*, 497 F. App'x. 196, 198 (3d Cir. 2012) (unpublished); *United States v. Evans*, 587 F.3d 667, 674 (5th Cir. 2009).

court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Id.* (quotation marks omitted).

Nothing indicates in this case the district court failed to consider the § 3553(a) factors or otherwise abused its discretion. The first page of form AO-247, signed by the judge, indicates that he has "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a)." App., Vol. 1 at 42. The (sealed) second page of form AO-247 correctly indicates the amended guidelines range. And it is safe to infer from the court's rejection of the low-end-of-the-range sentence that it carefully considered the materials (which included an incident of misconduct while in prison) presented to it by the parties.

The circuits are split on the degree of explanation necessary to satisfy § 3582. The First, Third, and Fourth Circuits, for example, have all held that no elaborate explanation is necessary in § 3582 sentence-reduction proceedings. *See United States v. Zayas-Ortiz*, 808 F.3d 520, 524 (1st Cir. 2015) (affirming unelaborated AO-247 order where "the record as a whole is sufficient for [the court of appeals] to infer the pertinent factors taken into account by the court below"); *United States v. Brown*, 497 F. App'x 196, 198–99 (3d Cir. 2012) (unpublished) (affirming unelaborated AO-247 order where "[t]he record shows the District Court's consideration of the relevant factors and the rationale for its § 3582(c)(2) ruling"); *United States v. Smalls*, 720 F.3d 193, 195–96 (4th Cir. 2013) ("[A]bsent a contrary indication, [the court of appeals] presume[s] a district court deciding a § 3582(c)(2) motion has considered the 18 U.S.C. § 3553(a) factors and other pertinent matters before

it." (internal quotation marks omitted)). On the other hand, several other circuits have found an explanatory requirement in this context. *See United States v. Christie*, 736 F.3d 191, 195 (2d Cir. 2013) ("[T]he lack of reasoning in the court's order prevents [the court of appeals] from exercising meaningful appellate review." (internal quotation marks omitted)); *see also United States v. Howard*, 644 F.3d 455, 461 (6th Cir. 2011); *United States v. Marion*, 590 F.3d 475, 478 (7th Cir. 2009); *United States v. Burrell*, 622 F.3d 961, 964 (8th Cir. 2010); *United States v. Trujillo*, 713 F.3d 1003, 1009 (9th Cir. 2013); *United States v. Williams*, 557 F.3d 1254, 1256-57 (11th Cir. 2009) (all same).

Chavez-Meza relies on these authorities and also points to two Tenth Circuit cases in arguing for a contrary result. In the first case, *United States v. Dorrough*, 84 F.3d 1309, 1311 (10th Cir. 1996), we stated in dicta that "[t]here is no requirement that the district court make specific findings regarding [the 18 U.S.C. § 3553(a) factors in sentence-reduction orders] as long as it states the reasons for its actions." The other case, *United States v. Nelson*, 303 F. App'x 641 (10th Cir. 2008), an unpublished decision that relies on *Dorrough*, remanded an AO-247 order that lacked any explanation, explaining "we lack a meaningful basis for reviewing the district court's consideration of the relevant factors." *Id.* at 646. But dicta and unpublished opinions do not bind panels of this court. *See* 10th Cir. R. 32.1(A) ("Unpublished decisions are not precedential, but may be cited for their persuasive value."); *Bates v. Dep't of Corr.*, 81 F.3d 1008, 1011 (10th Cir. 1996) ("[A] panel of this [c]ourt . . . is not bound by a prior panel's dicta."). We nonetheless are persuaded that § 3582 does not require more explanation than was provided here.

First, *Dorrough* and *Nelson* ultimately locate the source of the explanatory requirement in § 3553(c),[3] but, as we explained in *Verdin-Garcia*, § 3582(c) plainly does not incorporate that requirement. *See Verdin-Garcia*, 824 F.3d at 1221 ("§ 3582(c)(2) . . . does not mention § 3553(c)."). Although *Nelson* states that § 3582(c)(2) "require[s]" a district court "to state the reasons for its decision," 303 F. App'x at 646, § 3582(c)(2) only directs courts to *consider* the § 3553(a) factors. Nowhere does the language of § 3582(c)(2) include, reference, or incorporate the explanatory requirement of § 3553(c). *Verdin-Garcia*, 824 F.3d at 1221. *Nelson*'s statement that § 3582(c)(2) requires a statement of reasons is unpersuasive for that reason.

Second, *Dorrough* and *Nelson* are inconsistent with our cases on sentencing, which provide a ceiling for the requirements in sentence-reduction proceedings. If a sentencing court does not need to explain the reasons behind a within-guidelines sentence, the standard cannot be higher for sentence reduction. Following *Nelson*'s approach would create a more stringent standard for sentence-reduction proceedings than for original sentencing proceedings. Had Congress wished to include an explanatory requirement in the sentence-reduction provision, as they did in § 3553(c), they could have done so. But "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461–62 (2002).

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[3] *Dorrough* gets to § 3553(c) in two steps. As authority for its dictum, *Dorrough* cited *United States v. Lee*, 957 F.2d 770, 774–75 (10th Cir. 1992), a case about supervised release that cites § 3553(c) as authority for a similar dictum. *Nelson* cites *Dorrough*, so it too ultimately derives its holding from § 3553(c). *Nelson*, 303 F. App'x at 645.

The rule of *Nelson* might be good practice for the district courts, and reviewing courts might benefit in some circumstances from additional explanation, but as we explained, neither the text of the statute nor our precedent *require* additional explanation. Even though district courts *need not* explain their decisions in sentence-reduction orders, that does not mean that they *should not* do so. In *Verdin-Garcia*, we announced a "[g]eneral [p]olicy [s]upporting [e]xplanation," in light of "the need for a district court to create a meaningful basis for appellate review and to promote the perception of fairness." 824 F.3d at 1222. As the First Circuit noted in a similar case, "[e]ven a single sentence incorporating the government's or probation officer's position might have spared this case a trip to the [court of appeals] and all the attendant effort and expense associated therewith." *Zayas-Ortiz*, 808 F.3d at 525. But the standard of review is abuse of discretion, not best practice. In the absence of an explanatory requirement, we do not find that the district court abused its discretion.

III. Conclusion

We therefore **AFFIRM** the district court's order reducing Chavez-Meza's sentence to 114 months.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

April 14, 2017

Elisabeth A. Shumaker
Clerk of Court

No. 16-2062
(D.C. No. 1:12-CR-00701-WJ-1)
(D. N.M.)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADAUCTO CHAVEZ-MEZA,

Defendant-Appellant.

JUDGMENT

Before **TYMKOVICH**, Chief Judge, **SEYMOUR**, and **KELLY**, Circuit Judges.

This case originated in the District of New Mexico and was submitted on the briefs at the direction of the court.

The judgment of that court is affirmed.

If defendant, Adaucto Chavez-Meza was released pending appeal, the court further orders that, within

30 days from the filing of the mandate of this court in the District Court, the defendant shall surrender to the United States Marshal for the District of Mexico in execution of the judgment and sentence imposed; however, the District Court, in its discretion, may permit the defendant to surrender directly to a designated Bureau of Prisons institution for service of sentence.

Entered for the Court

/s/ Elisabeth A. Shumaker
ELISABETH A. SHUMAKER, Clerk